



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 7, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0205

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 – Using Force, 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

*This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.*

### **EXECUTIVE SUMMARY:**

Named Employee #1 (NE#1) assisted King County Sheriff's Office (KCSO) deputies with handcuffing the Complainant. The Complainant alleged that officers broke his arm and choked him during his arrest.

### **ADMINISTRATIVE NOTE:**

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee involved in this case.

On June 12, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

OPA received a complaint and opened an intake investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, and use of force reports. OPA also interviewed the Complainant.

#### **A. OPA Complaint**

On May 12, 2023, Witness Supervisor #1 (WS#1)—a lieutenant—submitted an OPA complaint via Blue Team on behalf of the Complainant. WS#1 wrote that NE#1 responded to a rollover collision where KCSO deputies and Washington State Patrol (WSP) troopers<sup>1</sup> struggled to physically control the Complainant. WS#1 wrote that NE#1 assisted the officers by holding down the Complainant's arm and moving it into a cuffing position while the Complainant was in the prone position. WS#1 wrote that the Complainant alleged that officers tried to break his arm and choked him.

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<sup>1</sup> Although WSP troopers responded to the collision, they were not involved in the Complainant's arrest. Based on OPA's review of BWV, two KCSO deputies and NE#1 were involved in physically apprehending the Complainant.



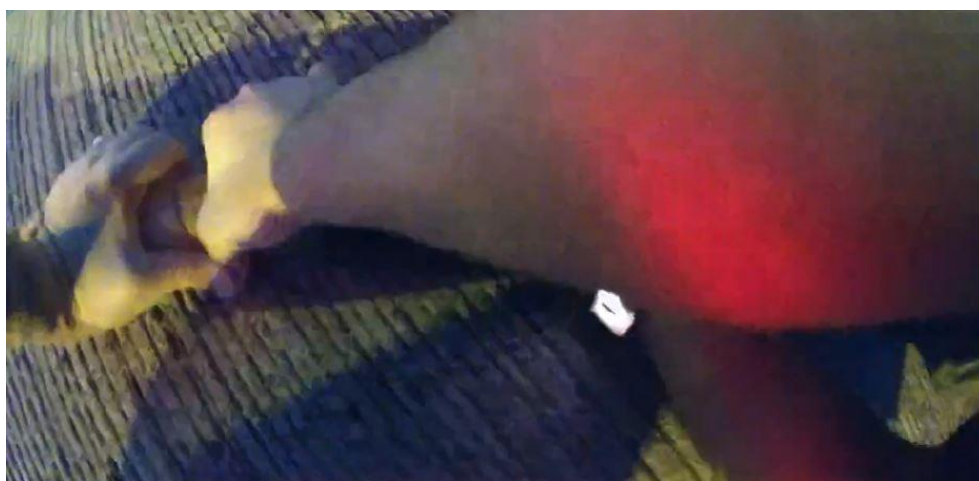
## **B. Computer-Aided Dispatch (CAD) Call Report**

On April 26, 2023, at 8:39 PM, CAD call remarks noted, “2 [VEHICLES], ONE FLIPPED OVER, GETTING FIRE. WILL SCREEN [WASHINGTON STATE PATROL] SHORTLY.”

## **C. Body-Worn Video (BWV) and Incident Report**

Witness Officer #1’s (WO#1) and NE#1’s BWV captured the following events on April 26, 2023. WO#1 arrived and approached the Complainant. The Complainant’s car had flipped over. The Complainant argued with a KCSO deputy about needing to get something from his car. WO#1 told the Complainant to step away. The Complainant complied but later reapproached his car. WO#1 told the Complainant to stay out of the car. The Complainant went around his car and reached into the back seat.

NE#1, who arrived shortly after WO#1, and two KCSO deputies immediately grabbed the Complainant, and a struggle ensued. The three officers brought the Complainant to the ground. The Complainant, on his back, resisted and shouted. One KCSO deputy was on the Complainant’s chest, another KCSO deputy appeared to wrap his arm around the Complainant’s head, and NE#1, using both hands, held down the Complainant’s right arm. The officers proceeded to roll the Complainant over while he shouted and resisted. The Complainant said, “What are you guys doing? I need help, bro! What are these [racial epithet] on, bro? These [racial epithet] are trying to break my arm, bro. Help me.” The Complainant could be heard coughing and choking. The Complainant said, “[Unintelligible] choking me.” The Complainant sounded as if his regular breathing was possibly constricted and his speech sounded labored.<sup>2</sup> The Complainant repeated complaints of being choked while NE#1’s hands were fixed on the Complainant’s right arm, shown below.



*Image depicting NE#1 using both hands to pin down the Complainant’s right arm.*

<sup>2</sup> OPA could not see whether a KCSO deputy choked the Complainant because BWV did not capture the Complainant’s head area. At the time the Complainant complained of being choked, NE#1’s BWV was aimed at the Complainant’s right arm as NE#1 held it down.



Officers rolled the Complainant over to the prone position. NE#1 released his grip on the Complainant's right arm, grabbed the Complainant's left arm, and brought that arm behind his back. A KCSO deputy handcuffed the Complainant.

Seattle Fire Department (SFD) personnel arrived and evaluated the Complainant. The Complainant told SFD that "they fucked it up." The Complainant became verbally aggressive, causing SFD personnel to terminate their examination. The Complainant was transported to Harborview Medical Center (HMC).

NE#1 wrote an incident report consistent with the events captured on BWV, with the exception that NE#1 mistakenly documented both KCSO and WSP were involved in the Complainant's arrest. Additionally, NE#1 wrote that officers found a firearm in the rear of the Complainant's car. NE#1 wrote that officers learned that the Complainant was a felon, so he was prohibited from possessing a firearm. NE#1 wrote that the Complainant was arrested for unlawful possession of a firearm.

#### **D. Use of Force Reports**

NE#1 wrote a Type I<sup>3</sup> use of force statement consistent with the evidence summarized above. NE#1 wrote, "Nothing that I was doing during my interaction with [the Complainant] could break [the Complainant's] arm, as I was being cautious with the amount of force used." NE#1 wrote, "I assisted in holding down [the Complainant] so handcuffs could be applied. I held down [the Complainant's] left and right arm at various points in time because he was putting up resistance." NE#1 also wrote, "The force was necessary because [the Complainant] originally was lunging for his overturned vehicle, which is very concerning for law enforcement as we do not know what is inside of the vehicle. It was later discovered that there was a Glock style handgun in the vehicle, near where [the Complainant] was lunging towards."

Three supervisors were involved in the force investigation and review. Their findings were consistent with the evidence summarized above. First, Witness Supervisor #2 (WS#2)—an acting sergeant—wrote that he screened the Complainant's arrest and classified NE#1's use of force as Type I because the Complainant "said something to the effect that officers were trying to break his arm when [NE#1] had his hands on the [Complainant's] left forearm." WS#2 also wrote, "The [Complainant] received a full screening at HMC and was cleared to be booked into jail."

Second, WS#1—the lieutenant who filed the OPA complaint—wrote, "[NE#1] used the lowest force in his efforts using a controlled takedown while attempting to control only the arms of the [Complainant] as the two other King County deputies had control of the rest of the [Complainant's] body." WS#1 wrote, "The actions by [NE#1] were [de] minimis force with no expectation of possible injury." WS#1 also wrote that NE#1 was "clearly holding onto the [Complainant's] arm" when the Complainant said he was being choked. WS#1 concluded, "I approve this [use of force] and find it to be consistent with Department policy and law."

Third, Witness Supervisor #3 (WS#3)—an acting captain—wrote that WS#1's conclusion was "supported by a preponderance of the evidence" and that WS#2's investigation was "thorough." WS#3 concluded:

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<sup>3</sup> Type I is force that "causes transitory pain or the complaint of transitory pain." SPD Policy 8.050. An example of Type I force includes, among other things, a "[c]ontrolled placement/takedown that results in a complaint of pain or causes/is likely to cause transitory pain or disorientation." SPD Policy 8.400.



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*The use of force is approved. The use of force was within policy and to assist another agency in controlling [the Complainant] that was actively resisting and not listening to officers' instructions. The only force used was de minimis.*

#### **E. OPA Interview**

OPA interviewed the Complainant. The Complainant said officers were overly aggressive with him, describing the incident as beating him "all types of ways." The Complainant said he did not resist when officers arrested him. The Complainant said an officer choked him with two fingers, which were in the middle part of his throat by his Adam's apple. The Complainant said he felt increasing pressure as that officer pinched and squeezed his two fingers. The Complainant said his wrist was injured from a prior incident. The Complainant said officers bent his arm and pushed it in weird positions.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 – Allegation #1**

##### **8.200 – Using Force, 1. Use of Force: When Authorized**

The Complainant alleged that NE#1 used excessive force.

SPD Policy 8.200(1) requires that force used by officers be objectively reasonable, necessary, and proportional. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." *Id.* Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." SPD Policy 8.050. Reasonableness must allow for the fact that officers are often forced to make "split-second decisions" in tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." *Id.* The force must also be proportional to the threat posed to the officer. *Id.*

Here, NE#1 was one of three officers who brought the Complainant to the ground, rolled him to the prone position, and handcuffed him. NE#1's use of force was objectively reasonable, necessary, and proportional.

First, NE#1's use of force was objectively reasonable. The Complainant was noncompliant despite at least two officers ordering the Complainant to stay away from his car. Officers did not want the Complainant reaching into his car because they did not know what was in it. The Complainant defied officers' orders and reached in, causing officers to arrest him. The Complainant resisted arrest and was verbally aggressive. BWV captured NE#1 assisting two KCSO deputies by pinning the Complainant's arms to the ground while the KCSO deputies effected the arrest. NE#1's use of force was objectively reasonable because the Complainant defied officers' orders, resisted arrest, and posed a threat to officers by reaching into his car. Officers would later learn that there was a firearm in the Complainant's car and that the Complainant was prohibited from carrying one because he was a felon. The government's interest in apprehending the Complainant was high under these circumstances.

Second, NE#1's use of force was necessary. The Complainant refused to follow officers' orders, so officers used force to require compliance. There was no reasonably effective alternative to the use of force. Additionally, the amount of



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force NE#1 used was reasonable to effect the Complainant's arrest. The Complainant resisted arrest. In response, NE#1 used force to pin down the Complainant's arms while the KCSO deputies handcuffed the Complainant.

Third, NE#1's use of force was proportional. NE#1 pinned down the Complainant's arms during his arrest. NE#1 did not choke the Complainant or break his wrist.<sup>4</sup> At the time the Complainant complained of being choked, NE#1's hands were secured on the Complainant's arm. WO#1's BWV also captured NE#1's body on the ground, not on the Complainant. Additionally, the Complainant complained of a broken wrist, but neither SFD nor HMC found evidence of a broken wrist. The Complainant alleged that officers bent his arm and pushed it in weird positions. However, OPA could not substantiate this allegation based on its review of NE#1's BWV, which captured NE#1 clearly pinning down the Complainant's arm to the ground. NE#1 applied a proportional amount of force when he assisted in the Complainant's arrest.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

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<sup>4</sup> OPA noted that NE#1's BWV captured the Complainant sounding as if his regular breathing could have been restricted. The Complainant also alleged that an officer choked him. OPA ruled out NE#1 but determined that only KCSO deputies were situated near the Complainant's neck area. OPA referred the choking allegation to the King County Office of Law Enforcement Oversight for its review.